

ESTTA Tracking number: **ESTTA278832**

Filing date: **04/17/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |   |
|------------------------|---|
| Proceeding             | 78366315  |
| Applicant              | American Gateway Marketing Group, Inc.  |
| Correspondence Address | Mark G Falkin<br>Attorney@Law<br>4107 Medical Parkway Suite 207<br>Austin TX 78756, TX 78756<br>UNITED STATES<br>mark@trademarkfalkin.com |
| Submission             | Appeal Brief  |
| Attachments            | zenergy315_ttab_brief_4-17-09.pdf ( 1 page )(13560 bytes )  |
| Filer's Name           | Mark Falkin   |
| Filer's e-mail         | mark@trademarkfalkin.com  |
| Signature              | /mark falkin/   |
| Date                   | 04/17/2009  |

Ex. Parte Appeal  
Ser. No. 78366315  
Mark: ZENERGY

April 17, 2009

There is no confusion with the cited mark in U.S. Registration No. 2895592.

The *services* listed in this cited registration are: Educational services, namely, conducting classes in the field of health and wellness in Class 41.

Applicant's *goods* are exercise equipment, namely personal exercise mats, yoga and pilates mats in Class 28.

A reasonable consumer is not likely to be confused as to source. A reasonable consumer of exercise mats is not going to somehow be confused with registrant's health educational services. The goods and services here flow in completely different streams of commerce.

Additionally, applicant's date of first use in commerce well pre-dates registrant's alleged first use. Thus, applicant is the senior user of this mark.

Applicant respectfully asks that the Examiner's denial be vacated and that this application move forward to registration.

/mark falkin/  
Mark Falkin  
4107 Medical Parkway  
Suite 207  
Austin, TX 78756  
Ph. 512-560-4950  
Fx. 512-532-6063  
mark@trademarkfalkin.com  
*Attorney for Applicant*